



STATE BOARD OF EQUALIZATION

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December 12, 2014

VIA INTERNET

Dear Interested Party:

The Compliance Policy and Procedures Manual (CPPM) is a guide for the Board of Equalization (BOE) staff in administering tax and fee programs. It is available to the public and can be accessed from the BOE web page at <http://www.boe.ca.gov/sutax/staxmanuals.htm>.

The Sales and Use Tax Department (SUTD) is proposing to revise CPPM sections 120.030 and 150.010 – 150.040 to incorporate existing policies and procedures regarding written tax advice prepared by Board of Equalization staff. The revision material is provided on the following pages for the convenience of interested parties who may wish to submit comments or suggestions. Please feel free to publish this information on your website or otherwise distribute it to your association/members.

If you have any comments or suggestions related to the proposed CPPM revision, you may contact the BOE at CPPM.RevisionSuggestions@boe.ca.gov. Your comments or suggestions must be received by BOE no later than **February 12, 2015**, in order to be considered by staff. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Susanne Buehler".

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

ADVICE TO TAXPAYERS

120.030

The importance of giving complete and correct advice to taxpayers cannot be over emphasized. Incomplete information or misinformation given to a taxpayer by a BOE employee ~~has a disastrous effect upon good~~may have serious consequences for the taxpayer and a negative impact upon the BOE's public relations. It may also create future disruptions to the taxpayer and unnecessary workload for BOE staff.~~In addition, RTC section 6596 for sales and use tax and similar sections for taxes administered by PSTD may relieve the taxpayer of tax, interest, or penalty when failure to report or pay is due to reliance on written advice from the BOE (see CPPM 150.040). Authorizing statutes for the sales and use tax and for special taxes are summarized in Exhibit 2, Table 1 — Reliance on Written Advice. The compliance employee must~~

In order for staff to be sure that all answers given to the public are correct, they ~~. The entire case~~ must ~~be~~ carefully examined all relevant facts before a conclusion is reached. ~~Snap answers, or answers based upon incomplete information, are inexcusable.~~ In addition, it is ~~never~~ not appropriate for a BOE employee to offer any legal advice, other than interpretation of the tax laws administered by the BOE. Taxpayers who verbally request tax information are to be advised that, although information is being provided, the taxpayers may also wish to put such request in writing to receive from the BOE a written response that may serve as basis for relief under RTC section 6596 and similar sections for taxes administered by PSTD (see CPPM section 150.015).

Any officially published regulation, publication, or informational release of the BOE intended for public distribution may be furnished to the taxpayer (see CPPM 135.075). Operations Memos that do not have a "confidential" status notation under the title, "OPERATIONS MEMO" are available on BOE's website. Operations memos that have a confidential status notation must have all confidential information redacted before being released to the public.

ANNOTATIONS

Annotations should not be used as the basis for advice given to taxpayers, as they do not have the force and effect of law. Annotations are synopses of past advice provided by the BOE's legal staff and may be revised at any time. For research purposes, it can be helpful to review the backup letter summarized by the annotation. Both the annotations and the backup letters are available on BOE's website. If a copy of an annotation is provided to any person, it must be accompanied by the following statement:

"Annotations are summaries of the conclusions reached in selected legal rulings of counsel. Annotations are intended to provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance. Annotations do not have the force or effect of law and may be revised at any time. Following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest, and penalty except: (1) when the advice was written in direct response to a request for advice from the specific taxpayer seeking to rely on the advice; or (2) the annotation or legal ruling of counsel is provided to the taxpayer within the body of a written communication in direct response to a written inquiry from that taxpayer and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel."

Questions pertaining to other agencies or to the laws they administer should be referred to that agency.

WRITTEN ADVICE

Written advice by the BOE to a taxpayer in response to a taxpayer's specific written inquiry or an inquiry from the taxpayer's representative seeking clarification on the application of the tax or fee to a specific transaction ~~relief from liability~~ may constitute written advice that the taxpayer can rely on for relief from liability under RTC section 6596 ~~for~~ similar statutes in the BOE's other tax programs. Written advice subject to RTC section 6596 may be in the form of email correspondence, as well as prior audit working papers. For detailed information regarding preparing correspondence that may be relied upon for relief from liability under RTC section 6596, see CPPM section 150.000 et seq. ~~To be considered a specific written inquiry, representatives must identify the specific taxpayer for whom the advice is requested. Such an inquiry must also fully describe the specific facts and circumstances of the activity or transactions for which the advice was requested.~~

~~In responding to accountants, attorneys, or other taxpayer representatives, when the name of the taxpayer is not divulged in the correspondence, the writer will ask the representative to provide the name and permit number of~~

~~the taxpayer to enable the BOE to maintain appropriate records with respect to the information provided. The taxpayer's name and permit number will be referenced in the BOE's response.~~

~~If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. It is important that staff summarize those new facts in their written response, particularly if the discussion with the taxpayer or representative is by phone. Staff is encouraged not to make assumptions. However, should it become necessary to do so, they should be clearly identified as such in the letter.~~

~~A trade or industry association or franchisor may request advice on behalf of its member(s) or franchisee(s) if the association or franchisor identifies and includes the specific member or franchisee name for whom the advice is requested. For an identified trade or industry association member or franchisee to receive relief from liability based on the written advice to the association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.~~

~~Written advice may only be relied upon by the taxpayer to whom it was originally issued or a legal or statutory successor to that taxpayer. If staff is confident that all of the facts of the issue are present, a statement substantially similar to the following must be included in the response to the taxpayer:~~

~~"Provided that the facts discussed below are accurate and verifiable by audit, the taxpayer may rely on this response for purposes of Revenue and Taxation Code section 6596. (See Cal. Code Regs., tit. 18, § 1705, subd. (b) [describing the circumstances under which relief from liability is available for reasonable reliance on written advice given by the BOE].)"~~

~~When there is doubt that all the facts have been presented by the taxpayer and staff must make substantial assumptions, the following may be used:~~

~~"Before discussing your questions in more detail below, I note that the facts you provided are not sufficiently complete. Therefore, I have made assumptions throughout this opinion letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions I have made are incorrect, the opinions expressed in this letter may not be reliable. Provided that the facts in this letter (both summarized and assumed) are accurate and verifiable by audit, the taxpayer may rely on this response for purposes of Revenue and Taxation Code 6596. (See Cal. Code Regs., tit. 18, § 1705, subd. (b) [describing the circumstances under which relief from liability is available for reasonable reliance on written advice given by the BOE].)"~~

~~Each tax program must reference the applicable statute or provision for written advice. Written advice that meets the above criteria will qualify for relief of liability under section 6596 or other applicable statutes even when the~~

~~information is provided by e-mail. For more information on relief of liability under RTC 6596, see CPPM 150.040~~

CORRESPONDENCE

150.000

ACKNOWLEDGEMENT

150.005

All incoming correspondence not subject to the Public Records Act (PRA) must be either responded to or acknowledged within 12 days of receipt. PRA requests must be responded to or acknowledged within 10 days, as required by law ([see CPPM section 135.075](#)). These guidelines also apply to incoming email. ~~(See CPPM 135.075.)~~ BEAM sections 7600-7660 provide uniform guidelines for correspondence acknowledgement. Any custom letter (i.e. not a BOE pre-formatted letter) must be reviewed by a supervisor or designee before it is sent to a taxpayer. For letters requesting tax advice, see CPPM section 150.015

FORMAT AND CONTENTS

150.010

Letters to taxpayers, organizations and the general public will be on [BOE](#) letterhead ~~of the BOE~~ and will contain the signature, typewritten name, and working title of the authorized signer. The interoffice memorandum form should not be used.

Government Code section 7525 requires state agencies to place telephone numbers on official stationery used in communications with the public. This requirement includes ~~data processing~~ printed forms ~~in addition to manually prepared forms~~, letters and ~~E~~-emails. Therefore, the Document Intake and Management Unit ([MIC 58](#)) should be notified by ~~memorandum~~ sending an email to docmgmt@boe.ca.gov whenever changes are made in district or branch office telephone numbers or addresses. The notices should be given as soon as firm information is available and should include the effective date of the change so ~~data processing originated information and~~ preprinted forms, envelopes, and phone listings may be corrected.

All BOE correspondence must serve as a complete source of the questions asked, the facts presented and the answer given. When BOE staff responds to tax question(s) from a taxpayer, all letters to the taxpayer written subsequent to receipt of the taxpayer's letter will be referenced in the response.

When correspondence may cause recipients to contact a Board Member, the Board Member should be copied. An example of such correspondence would be a letter sent to an entire class of taxpayers. (Always send a cc to the Executive Director when sending a cc to Board Members.)

GUIDELINES FOR WRITTEN TAX ADVICE QUALIFYING FOR RELIEF UNDER REVENUE AND TAXATION CODE 6596

150.015

RTC section 6596 provides the statutory authority for the BOE to relieve taxpayers of sales and use tax, and any penalty, and ~~or interest added where~~

the BOE finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the BOE. Many of the tax and fee programs administered by the Property and Special Taxes Department (PSTD) contain statutes with provisions similar to RTC section 6596. These provisions are listed in Exhibit 2, Table 1, *Reliance on Written Advice*. When providing written advice, PSTD staff should use the same disclaimer language in this section, but must cite the comparable statute for the tax or fee program for which they are providing written information.

In general, claims of reliance on erroneous advice are submitted to the Board Members (Board) for approval. However, the Board delegated this authority for SUTD accounts to the SUTD Deputy Director in cases where the district office and the taxpayer are in full agreement that section 6596 relief applies. The guidelines in this manual apply only in cases where section 6596 relief falls within the limited authority delegated to the SUTD Deputy Director. When the district office does not recommend relief, the taxpayer's request for relief shall follow the normal appeals process (see publication 17, *Appeals Procedures: Sales and Use Taxes and Special Taxes*, available on the BOE website). For PSTD programs, delegation of relief under the correlating statutes has not been granted to the PSTD Deputy Director, and must be submitted to the Board for approval.

Relief is provided only where there has been written advice by the BOE in response to a written request, ~~in writing~~, from a specifically identified taxpayer ~~who, in turn~~, or the taxpayer's representative, that fully describes ~~fully~~ the specific facts and circumstances of the activity or transaction for which advice was requested. Emails sent in response to taxpayer inquiries received by email qualify as written tax advice, and must therefore follow the guidelines of this section.

In addition, Sales and Use Tax Regulation 1705, Relief from Liability, provides that a prior audit report of a person requesting relief will be considered written advice from the BOE if the issue in question was addressed in the audit report. ~~Generally, a field waiver will not provide relief under section 6596.~~ For more information regarding tax advice provided in a prior audit, see Audit Manual section 0105.04, *Qualified Erroneous Advice*.

~~Many of the Special Taxes programs contain statutes with provisions similar to RTC section 6596. These provisions are listed in Exhibit 2, Table 1, *Reliance on Written Advice*. Therefore, Special Taxes staff should also use the guidelines in this section.~~

Written advice may only be relied upon by the taxpayer to which it was originally issued or a legal or statutory successor to that taxpayer. Additionally, if certain conditions are met, a prior audit may be relied upon by

a person with shared accounting and common ownership with the audited taxpayer (see Regulation 1705(c)). The taxpayer's suppliers, customers, or other business associates are not protected under RTC section 6596 by the written advice to the taxpayer. Written advice that may serve for relief under RTC section 6596 must include the following statement:

Provided the facts discussed below are accurate and verifiable by audit, (state taxpayer's name) may rely on this response for purposes of Revenue and Taxation Code (RTC) section 6596. If you provide this letter to your customers or vendors, those customers or vendors must write to the Board of Equalization (BOE) and obtain their own written opinion in order for them to qualify for relief under RTC section 6596. Any person seeking relief under this section will be required to furnish a copy of such person's own original written inquiry to the BOE along with a copy of the written response received from the BOE.

If individual taxpayers are identified, but background information is incomplete, staff should make reasonable efforts to obtain additional facts. If staff is unable to obtain the additional facts from the taxpayer, the written response should contain clearly identified assumptions. When the assumptions made by staff are consistent with the facts of the transaction(s) in question, the written tax advice may serve for relief under RTC section 6596. Written advice to taxpayers that include staff's assumptions must include the following statement:

Before discussing your questions in more detail below, please note the facts you provided are not sufficiently complete. Therefore, assumptions have been made in this letter to answer your questions. If the actual facts differ from the facts summarized in this letter, or if any of the assumptions made are incorrect, the opinion expressed in this letter will not qualify for relief under Revenue and Taxation Code (RTC) section 6596. Provided both the summarized and assumed facts of this letter are accurate and verifiable by audit, (state taxpayer's name) may rely on this response for purposes of RTC section 6596.

When responding to accountants, attorneys, or other taxpayer's representatives where the name of the taxpayer is not divulged, staff should ask that the representative provide the name and account number of the taxpayer in order for the BOE to provide a response that may be relied upon, and to maintain appropriate records with respect to the information provided. The taxpayer's name and account number will be referenced in the BOE's response.

Tax advice to trade/industry associations and franchisors that do not identify their members, taxpayer's representatives failing to identify their clients, and/or taxpayers whose questions are vague or general in nature must include the following statement.

The answer given is intended to provide general information regarding the application of the tax and will not serve as a basis for relief of liability under Revenue and Taxation Code section 6596.

Written tax advice prepared by BOE staff, including email responses, must include one of the above statements regarding relief under RTC section 6596 if the written tax advice indicates that any part of the transaction is exempt from tax. Written tax advice indicating that the transaction is subject to tax, rather than exempt from tax, need not include any of the above statements regarding relief under RTC section 6596.

Whenever staff conducts classes or seminars for the public, they must provide information regarding written tax advice, and must emphasize that taxpayers can obtain written advice with respect to the questions they have regarding the application of tax to a particular type of transaction. Handouts provided to participants must include a copy of BOE-8, *Get it in Writing*, or reference a link to the publication on the BOE website.

REVIEW

150.020

SUTD District aAdministrators and hHeadquarters sSupervisors will review all letters involving tax questions to ensure that the information is correct and in the proper format. ~~The review with respect to letters which state a particular activity or transaction is exempt from tax (exempt letter) will be completed before the letters are mailed.~~

~~Copies of all correspondence should be initialed in the lower right hand corner after being reviewed.~~

Copies of all written responses confirming that transactions are exempt, along with the taxpayer's original written inquiry and any subsequent modification/rescission letters, will be forwarded to the Audit and Information Section (AIS) for final review of the accuracy of the written response. Any written response requiring adjustment will be returned to the originating party for modification or to rescind the written tax advice. Correspondence advising that a transaction is taxable should *not* be forwarded to AIS.

MODIFICATION/RESCISSION OF PRIOR ADVICE

150.025

Where an opinion has been issued, and it is subsequently determined that the tax advice as applied to the facts given is incomplete or incorrect, appropriate modification or rescission letters should be sent to the taxpayer. Copies of the modification or rescission letter must be sent to AIS, and to Taxpayer Records Unit using Documentum procedures on eBOE.

Written advice may also be invalidated by statutory or constitutional law, a change in the BOE's regulations, or a final decision of a court, rendering the BOE's earlier written advice no longer valid.

DISPOSITION OF CORRESPONDENCE

150.030

~~District administrators and headquarters supervisors will maintain records regarding the number of letters and E-mails received and for which a response was provided. This data, along with copies of all letters confirming transactions of an exempt nature or rescinding prior "exempt" correspondence should be accumulated monthly. This information, including the taxpayer's original inquiry, will then be forwarded to the SUTD Audit and Information Section (MIC: 44). That section will be responsible for a final review of the letter's accuracy. Any correspondence requiring adjustment will be returned to the originating party.~~

~~Special Taxes Division chiefs will maintain records and accumulate information as noted above and will be responsible for a final review of the letter's accuracy for letters written by Special Taxes staff. (See BEAM 7650.)~~

All written responses, regardless of whether the written tax advice provides that the transactions are exempt or subject to tax, should be filed in accordance with existing policy. In addition, SUTD District Administrators and Headquarters Section Supervisors must report the number of written inquiries received and responded to using the SharePoint program on eBOE. This information must be reported by the 7th of the month following the end of each quarter. For example, written inquiries received and responded to in 4th quarter 2014, must be reported by January 7, 2015.

PSTD Division Chiefs are responsible for maintaining a file of all original written requests regarding transactions/activities of an exempt nature. They are also responsible for ensuring all written responses are accurate. Additionally, all written responses confirming exemptions, along with any subsequent modifications/rescissions should be maintained as well.

~~RTC section 6596 provides the statutory authority for the BOE to relieve taxpayers of sales and use tax and any penalty or interest added where the BOE finds that the failure to make a timely return or payment was due to the taxpayer's reasonable reliance on written advice from the BOE. Relief is provided only where there has been written advice by the BOE in response to a request, in writing, from a specifically identified taxpayer who, in turn, described fully the specific facts and circumstances of the activity or transaction for which advice was requested.~~

~~In addition, Sales and Use Tax Regulation 1705, Relief from Liability, provides that a prior audit report of a person requesting relief will be considered written advice from the BOE if the issue in question was addressed in the audit report. Generally, a field waiver will not provide relief under section 6596.~~

~~Many of the Special Taxes programs contain statutes with provisions similar to RTC section 6596. These provisions are listed in Exhibit 2, Table 1, *Reliance on Written Advice*. Therefore, Special Taxes staff should also use the guidelines in this section.~~

~~Guidelines for Relief — Reliance on Written Advice~~ (Cont.) 150.040

~~PERIODS OPEN TO RELIEF REQUESTS~~

~~RTC sections providing relief do not specifically limit requests for relief to periods after an RTC section's effective date. Accordingly, relief may be granted to taxpayers under this section, regardless of when the advice was given, provided the taxpayer has not exhausted all administrative remedies. However, a claim for refund cannot be based on a claim of erroneous advice under section 6596. Section 6596 only applies when there has been a failure to make a timely return or payment; thus a claim for refund cannot be based on erroneous written advice received after the return has been filed or payment has been made.~~

~~The taxpayer will be required to demonstrate that all of the conditions set forth in RTC section 6596 or similar sections for other business taxes programs have been met. Only the person making the original tax inquiry or a legal or statutory successor to that person is entitled to rely on the written advice received from the BOE. However, written advice received during a prior audit may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons. If the taxpayer is making the claim based on an audit report, the report must be provided along with appropriate supporting~~

audit working papers. Documentation furnished should also include a statement under penalty of perjury, setting forth the facts on which the claim for relief is based. ~~Only the person making the original tax inquiry is entitled to rely on the written advice received from the BOE.~~ (See ~~CPPM 120.030~~[Regulation 1705\(e\)](#) regarding reliance by franchisees or members of a trade or industry association on written advice provided by the BOE, when requested by trade associations or franchisors who specifically identify the franchisees or members in the request for advice.) If any of these conditions are not met, the taxpayer should be informed that his or her request cannot be accepted as a valid claim/petition under section 6596. Taxpayers, whose claims/petitions are not accepted, should be informed of the ~~Board's~~[BOE's](#) appeals procedures.

Petitions for redetermination, late protests, or claims for refund received in district offices, under section 6596 or similar provisions, should be forwarded to the appropriate headquarters unit or Special Taxes Division. While staff is not authorized to make adjustments or credits under RTC section 6596 or similar provisions, district personnel are encouraged to submit recommendations regarding the acceptability of the documentation provided by taxpayers. ~~Limited authority to grant relief under section 6596 is delegated by the Board to the Deputy Director, Sales and Use Tax Department, or a designee. For more information on section 6596 relief see CPPM 120.030.~~